

8.1. A.11 Withholding of Parole Eligibility:

I Policy Index:

Date Signed: 10/21/2021

Distribution: Public

Replaces Policy: 09/2020 version

Affected Units: SD Board of Pardons and Paroles

Effective Date: 10/21/2021

Scheduled Revision Date: 09/2022

Revision Number: 8

Office of Primary Responsibility: Office of the SD Board of Pardons and Paroles

II Purpose:

To provide procedural processes to comply with SDCL 24-15-32.1.

III Definitions:

Withholding Eligibility:

Upon recommendation of sex offender treatment program staff and following a review of the inmate's history, treatment status, risk of reoffending, and a psychosexual assessment, the warden of the penitentiary may, at any time prior to the inmate's final discharge, recommend to the Board of Pardons and Paroles (board) that the parole eligibility pursuant to SDCL 24-15A-32 be withheld on an inmate sentence as a result of a conviction of a felony sex offense as defined in SDCL 22-24B-1. The board may, after a hearing, determine if parole eligibility is to be withheld. The decision of the board to withhold parole eligibility is final (See SDCL 24-15A-32.1).

IV Procedures:

Applicability:

- A. Inmates who are eligible for parole pursuant to SDCL 24-15A-32 and whose sentence(s) is for a sex offense (22-24B-1) may have their parole eligibility withheld as defined in SDCL 24-15A-32.1.
- B. Only inmates whose date of sex offense(s) occurred on or after July 1, 2006 may have their parole eligibility withheld under 24-1A-32.1.
- C. An inmate with multiple sentences may only have parole eligibility withheld on those sentences that meet the guidelines of SDCL 24-15A-32.1 and DOC Policy 1.4.B.11 - Withholding of Parole Eligibility.
- D. Parole eligibility may be withheld on an inmate who is past his/her initial parole date, as long as the inmate has not discharged the sentence(s) for the sex offense(s) for which the inmate is being recommended to have parole eligibility withheld. This may include:
 1. Non-compliant inmates as determined by the board and have been subsequently denied parole by the board (See DOC policy 1.4.B.1 *Individual Program Directives (IPD)*).
 2. Any inmate released on parole or suspended sentence that subsequently violates the terms of his/her parole/suspended sentence and is returned to prison.

Hearing Process:

- A. Board staff will schedule a hearing before a panel that conducts parole/suspended sentence revocation hearings (See Parole Board office OM 9.1.A.11).

B. The hearing officer(s) shall follow hearing script (Attachments 1 & 2).

Hearing Outcomes:

- A. In all cases, the board may withhold parole eligibility and allow the inmate to continue to expiration of sentence with the exception of split sentences.
- B. Where the inmate is serving a split sentence, the board may withhold the parole eligibility but not impose the suspended sentence under this policy or pursuant to SDCL 24-15A-32.1.
- C. The board may, in all cases, set a next review date and impose conditions (See: Board Policy 8.1.A.5).

Notification after Hearing:

- A. The inmate will be notified in writing of the board's decision as soon as practicable.

V Related Directives:

SDCL Chapters 24-15A, 24-13, 24-14, SDCL 22-24B-1
DOC Policy 1.4.B.11
Board Policies 8.1.A.5 and Board Office Operations Memorandum 9.1.A.11

VI Revision Log:

May 2009: New
November 2012: No changes
March 2014: No changes
May 2015: No changes
September 2016: No changes
December 2017: No changes
September 2020: **Update** IV Procedures – Notification after Hearing timeframe from 10 days to as soon as practicable. Minor language/formatting changes.
October 2021: Minor language changes.

<i>Original Signature on File</i>	<i>10/21/2021</i>
<i>Myron Rau, Chair</i>	<i>Date</i>

Attachment #1

WITHHOLDING OF PAROLE ELIGIBILITY HEARING:

INITIAL APPEARANCE AND READING OF RIGHTS

A. Read offender their rights. Reading of Rights:

1. ***You have the right to remain silent.***
2. ***You need not put on any evidence in your behalf.***
3. ***The Board must be reasonably satisfied that parole eligibility should be withheld.***
4. ***On the other hand, you have the right to testify on your own behalf if you so desire; call witnesses on your own behalf; and place before the Board any documentary evidence you wish us to consider.***
5. ***You have the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); Additionally, the rules of evidence do not apply to this hearing. (SDCL 24-13-12)***
6. ***You may be represented by an attorney at your own expense. You do not have a right to a court appointed attorney at this hearing.***
7. ***You have the right to know reasons the Warden has recommended the Board withhold your parole eligibility.***

B. State: **Do you understand what I have just read to you?**

C. Have inmate identify him/herself by full name and DOC number and indicate that they understand their rights in these proceedings (for court reporter or audio recorder).

Attachment #2

WITHHOLDING OF PAROLE ELIGIBILITY HEARING SCRIPT

A. Hearing Officer: Identify hearing officer(s)/panel members present for the record.

1. Ask Board counsel (if present) to identify self for the record.
2. Identify inmate: Ask him/her to state full name and DOC number for the record.
3. Ask that representatives/guests identify themselves for the record.

B. State ***"This is the time and place set for a Hearing to Consider the Withholding of Parole Eligibility."***

C. Give Oath: (To all that will be giving testimony) ***Do you solemnly swear that the testimony you are about to give in the matter now in hearing is the truth, the whole truth and nothing but the truth?***

D. Reading of Rights. Read the following rights (if necessary):

1. ***You have the right to remain silent.***
2. ***You need not put on any evidence in your behalf.***
3. ***The Board must be reasonably satisfied that parole eligibility should be withheld.***
4. ***On the other hand, you have the right to testify on your own behalf if you so desire; call witnesses on your own behalf; and place before the Board any documentary evidence you wish us to consider.***
5. ***You have the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); Additionally, the rules of evidence do not apply to this hearing. (SDCL 24-13-12)***
6. ***You may be represented by an attorney at your own expense. You do not have a right to a court appointed attorney at this hearing.***
7. ***You have the right to know reasons the Warden has recommended the Board withhold your parole eligibility.***

E. Explain the following if inmate is appearing without an attorney:

1. ***One of those rights is "The right to be represented by an attorney at your own expense." An attorney can help you in the presentation of evidence and protection of your legal rights. Do you wish to proceed without an attorney?*** If yes – proceed; If no – proceedings will end (inmate will be given an opportunity to retain an attorney; a new hearing date will be established by the hearing officer).

F Ask inmate did he/she understand the rights as they were read.

1. If yes – proceed; if no – clarify rights as needed.

G. Ask inmate if they have any questions regarding the procedures.

1. If yes – clarify as needed; if no – proceed.

H. Ask the inmate if they were served a hearing packet;

1. Review documents served on inmate and ensure they received all documents.

I. State: **Do you have any objection to entering this packet into evidence?**

1. Mark the packet as Exhibit #1

J. Ask inmate what his/her original charge and sentence was.

- K. State: **Did your attorney (if represented by council) receive a copy?** (If no, one can be provided by board staff).
- L. Read Notification for Warden's Review and Maximum Consequences. Ask: ***Do you understand that if you admit to the allegations or if the board finds you are an unacceptable risk to the community, we can withhold your parole eligibility, we can set you for a parole hearing at any time in the future prior to your discharge of this number?***
- M. Ask: **Were you made any promises or threatened in any way to make the following decision?**
- N. For each allegation:
1. Read allegation:
 2. Ask if admitting or denying?
 3. If admitting, (what basis) ask them to explain.
 4. If denying, (what basis) ask them to explain.
- O. Inmate's attorney's (if represented) may offer testimony at this time:
- P. Inmate's family/friends may offer mitigating information at this time:
- Q. Upon completion of testimony: Inform the inmate that a final decision will be determined, and he/she will be notified by the close of business on Friday of current week. Family, friends and counsel may call the board office for questions regarding the results. State: ***Thank you, this concludes this hearing.***